IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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O R D E R

Nand Kishore Mathur
vs.
The State of Rajasthan & Anr.

S.B. CIVIL WRIT PETITION NO.5325/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 22nd December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Kuldeep Mathur, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

In this writ petition, the petitioner has prayed for the direction to the respondents to make payment of full salary for the period from 01st March, 1995 to 17th September, 1996 with interest @ 12% per annum and further to make payment of

increment which became due on 01st May, 1995 and 01st May, 1996 and revise his gratuity and commutation by regularizing the aforesaid period and also make payment of GPF amount.

The petitioner was serving the respondents as Inspection Assistant. He was transferred from the office of Dy. Electrical Inspector, Jodhpur to Banswara by order dated 13th May, 1994. Due to ill-health however he could not join the duty immediately. He after obtaining the fitness certificate from doctor on 01st May, 1995 reported for duty to the office of Dy. Electrical Inspector, Jodhpur with an application to join his duties. The said officer did not allow the petitioner to join duty but informed that his absence from 16th May, 1994 to 28th February, 1995 has been treated as willful absence and his services have been terminated by order dated 13th February, 1995 as per Rule 86 of Rajasthan Service Rule. The petitioner submitted a representation to the Electrical Inspector, Jodhpur on 04th March, 1995 who by his order dated 17th September, 1996 cancelled the order of termination dated 13th February, 1995 with the observation that the department would be free

to proceed against the petitioner in major penalty disciplinary proceedings under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'CCA Rules'). The respondents then required the petitioner to join in the office of Inspector Assistant, Pratapgarh, district Bhilwara. The respondents thereafter served the petitioner charge-sheet under Section 16 of the CCA Rules. On dispute pertaining to the period of absence of the petitioner from the duties, according to the petitioner, he could not attend the duty from 16th May, 1994 to 28th February, 1995 because of his ill-health and then thereafter he offered to join on 01st March, 1995. In the inquiry held under Rule 16 of the CCA Rules, the inquiry officer did not find any charge proved against the petitioner and therefore disciplinary authority by order dated 29th November, 2001 exonerated the petitioner from all the charges. In these circumstances, the petitioner submitted an application to the respondents for regularization of period of his absence from 16th May, 1994 to 01st March, 1995 when nothing happened the petitioner again submitted a representation to the respondents requesting for payment of

period from 01st March, 1995 to 17th September, 1996 and for payment of selection grade. The Senior Electrical Officer, Jaipur by letter dated 25th February, 2002 however informed the petitioner that the Dy. Secretary of the Government Department of Energy has considered his representation and by order dated 21st September, 2002 directed the Senior Electrical Inspector to regularize the brake in petitioner's service from 01st March, 1995 to 17th September, 1996 by granting him leave/extraordinary leave. The petitioner then submitted a representation to the respondents on 10th October, 2002 that his absence of the aforesaid period could be treated as extraordinary leave because in spite of the fact that he offered to join, he was not allowed to join and moreover the termination order against the petitioner had already been set aside and the petitioner has been exonerated in the departmental inquiry. The petitioner then submitted an application on 29th October, 2002 under protest for granting extraordinary leave for the period from 16th May, 1994 to 28th February, 1995. He retired from service on 16th March, 2002. The Assistant Secretary to the Government by his order dated

21st May, 2002 asked the petitioner to remain present before the Dy. Secretary for hearing. The petitioner later was informed by the Senior Electrical Inspector by letter dated 10th December, 2002 that the period of his absence from 01st March, 1995 to 17th September, 1996 has been regularized by allowing him extraordinary leave for 566 days. It is against this order for the present writ petition has been filed.

The respondents have contested the writ petition by filing reply and have submitted that an alternative remedy of appeal was available to the petitioner before the Rajasthan Civil Services Appellate Tribunal therefore writ petition was not maintainable. On merits they submitted that when the petitioner was transferred from the office of Dy. Electrical Inspector, Jodhpur to Banswara he did not join at Banswara and this inspite of the fact that he was relieved from Jodhpur on 14th May, 1994 and infact he applied for leave after a considerable time. The appellate authority set aside the order dated 17th September, 1996 which was passed with reference to Rule 86 supra and while directing reinstatement of the

petitioner required the department to hold regular inquiry against him under Rule 16 of the CCA Rules. The petitioner has submitted medical certificates from 16th May, 1994 to 28th February, 1995 which are in all 14 in number from different doctors. The petitioner never during the intervening period of more than nine months informed the department about his illness or ailment. Although the petitioner was exonerated in the departmental inquiry by order dated 24th December, 2001, period of his absence from duty was directed to be regularized by treating the same as leave/extraordinary leave from service. Reference has been made to undertaking given by the petitioner in para 10-(a) that he would refund the difference between the leave salary drawn during privilege leave commuted leave and that admissible during half pay leave. Such similar undertaking was also given with regard to leave not due. It has been submitted that Senior Electrical Inspector by his letter dated 10th December, 2002 informed that the period of his absence from duty from 01st March, 1995 to 17th September, 1996 was regularized by allowing him extra ordinary leave of 566 days. It is therefore been prayed that the

writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the record.

The petitioner in this case has retired from service on 31st October, 2002. His services were terminated by invoking the Rule 86 of the R.S.R. by order dated 13th February, 1995. When this order was challenged by the petitioner in appeal, the appellate authority though set aside the order but remanded the matter back to the disciplinary authority for holding a regular inquiry under Rule 16 of the CCA Ruls and also directed that the question with regard to period of absence of the petitioner shall also be decided by the disciplinary authority. Accordingly the petitioner was required to join back by order dated 19th September, 1996. When the dispute with regard to the period of his absence/brake from 01st March, 1995 to 17th September, 1996 remained unresolved, the petitioner submitted an application on 29th December, 2001 for granting

him extraordinary leave for the period of 01st March, 1995 to 17th September, 1996. Now the petitioner says that this was an application submitted by him under protest.

A perusal of the application Annexure-11 would show that it was an unconditional application wherein the petitioner requested for grant of extraordinary leave from 01st March, 1995 to 17th September, 1996. When the petitioner applied for relief as aforesaid and that was granted by the respondents he cannot be at a later stage allowed to contend that such leave ought not to have been granted particularly when on the facts of the case, I find that the absence of the petitioner from 16th May, 1994 to 28th February, 1995 was without any intimation to the respondents about his illness which he sought to justify when he submitted sickness certificates of different 14 doctors. The petitioner's services were terminated under Rule 86 of R.S.R. since the regular inquiry was not held but the order was passed only Rule 86 of the R.S.R., in fairness to the petitioner, the appellate authority set aside the order of termination and remanded the matter back to the disciplinary authority for

holding a regular inquiry against him. The respondents although have regularized the period of absence from 16th May, 1994 to 01st March, 1995 but the period of absence of the petitioner from 01st March, 1995 to 17th May, 1996 was regularized only by granting extra ordinary leave to the petitioner. This period of absence which infact was covering the period from the date of termination till the passing of the order by the appellate authority has been regularized by granting him extraordinary leave. But that having been done on the application of the petitioner cannot be allowed to be questioned in the present proceedings. Although at the same time the petitioner cannot be denied the other benefits for this period except the actual emoluments/salary.

Although it is a fact that the aforesaid period has been regularized by granting extra ordinary leave to the petitioner at his own application. But the fact remains that this was the period during which the petitioner had to remain out of service on account of an order having been passed under Rule 86 on misconduct of absence. The appellate authority on

consideration of the entire material found the order of termination of the petitioner dated 13th February, 1995 as illegal and therefore by his order dated 17th September, 1996 held him entitled to reinstatement with liberty to the disciplinary authority to hold inquiry. The period of absence from the date of termination till reinstatement therefore cannot be attributed to the petitioner alone. In the facts of the case although if the petitioner cannot allowed the benefit of actual salary/emoluments for the said period but at the same time he cannot be denied other benefits flowing from regularization of the aforesaid period.

The writ petition therefore deserves to be partly allowed. While partly allowing the writ petition, it is directed that the petitioner shall be entitled to receive all other benefits, the period from 01st May, 1995 to 17th September, 1996 although on notional basis for the period including the increments which became payable to him on 01st May, 1995 and 01st May, 1996 and accordingly his gratuity and commutation would also be liable to be revised and any other benefits including the benefit

of selection scale to which he may be held entitled due the aforesaid period of service having been regularized shall be granted to him. The petitioner shall be entitled to the payment of revised gratuity and commutation if allowed already and PF etc., to the extent of increase only as a consequence of regularization of the aforesaid period.

[MOHAMMAD RAFIQ],J.

AKC